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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Hugh R. Sharkey et al. Art Unit : 3739
Serial No. : 09/664,473 Examiner : David M. Shay
Filed : September 18, 2000
Title : IN VIVO FORMED THERMALLY CONTRACTED COLLAGEN TISSUE

Commissioner for Patents
Washington, D.C. 20231

RESPONSE TO ACTION DATED SEPTEMBER 25, 2002

The Examiner has rejected claims 57-66 as obvious over Sand '709 in view of Makower, stating: "Sand ('709) teaches a method such as claimed except the use of RF...Makower et al teach the equivalence of RF energy and laser energy for heating tissue."

Applicants respectfully disagree. In particular, Makower does not teach the equivalence of RF energy and laser energy for heating tissue, but merely states that the device of Makower can be used with an energy delivery means that delivers laser energy or RF energy. (See, e.g., Makower page 5, lines 26-34). Just because a device can be used with both laser energy and RF energy, it does not follow that the laser energy and RF energy have an equivalent effect on tissue. In fact, while Makower does state that laser energy and RF energy can be used to ablate tissue (see, e.g., page 8, lines 1-4, page 15, lines 27-28, and page 19, lines 28-36), this commonality between the laser energy and RF energy in no way describes or suggests the claimed use of RF energy to achieve a controlled modification of a geometry of tissue, a different tissue effect than ablation. Therefore, there is no support for the Examiner's contention that Makower teaches the equivalence of RF energy and laser energy for achieving a controlled modification of a geometry of tissue, as claimed.

Applicants submit that claim 57, and claims 58-66 dependent thereon, are patentable over Sand in view of Makower for at least the reasons discussed above.

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Attorney's Docket No.: 14170-043002 / 25-31-0023

Applicants ask that all claims be allowed. Enclosed is a check for the Petition for Extension of Time fee. Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: January 27, 2003

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